Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1246

FRANK P. PARISH AND THEODORE FISHER PARISH,
Petitioners,

v.

MARYLAND AND VIRGINIA MILK PRODUCERS ASSOCIATION, INC., ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF PETITIONER IN ANSWER TO MOTION BY RESPONDENT MARYLAND AND VIRGINIA MILK PRODUCERS ASSOCIATION, INC., ET AL., TO DISMISS PETITION FOR WANT OF (A) STATUTORY JURISDICTION, AND (B) BECAUSE THE ISSUES RAISED BY THE PETITION WERE SETTLED BY THIS COURT'S DENIAL OF CERTIORARI IN A CASE BETWEEN THE SAME PARTIES EIGHT YEARS AGO.

FRANK P. PARISH
THEODORE FISHER PARISH
518 E. Baltimore Street
Taneytown, Maryland 21787
Appearing Pro Se.

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Respondent Maryland and Virginia Milk Producers Association, Inc. submits its brief in opposition to petition for certiorari and moves to dismiss said petition on grounds:

A. That this Court lacks statutory jurisdiction over this case, the petition for certorari having been filed on

February 12, 1979, more than ninety (90) days after the entry of the Court of Appeals' judgment on November 3, 19978; and

B. That the issues raised by the petition were settled by this court's denial of certiorari in the case between the same parties eight years ago.

QUESTIONS PRESENTED BY RESPONDENTS

1. Does this Court have statutory jurisdiction to entertain a petition for writ of certiorari in a civil case wherein the petition was filed more than ninety (90) days after the date of entry of the Court of Appeals' judgment, in violation of 28 U.S.C. 2101(c) and Rule 22(3) of this Court's Rules?

2. Should this Court even consider a petition for certiorari in a case where the petition essentially raised for relitigation issues that were settled by this Court's denial of certiorari eight (8) years ago in a case between the same parties?

PETITIONERS ANSWERS

1. The late date of filing the petition for writ of certiorari (February 12, 1979) was due to the advice of the United States Court of Appeals, Fourth Circuit, by letter dated November 15, 1978, stating "Pursuant to our telephone conversation of today, please be advised that you have ninety days from November 13, 1978, in which to file your petition for certiorari with the U.S. Supreme Court.

Sincerely yours,
William K. Slate, II

By:
Julian H. Layne Deputy Clerk

Photo copy of above letter attached hereto.

Copy of same letter was sent to the United States Supreme Court, Attention: Mrs. Ruffin, February 12, 1979.

Petitioners Parish trust that this Court will give to them (pro se complaintants) the liberal construction as was required in Hains v. Kerner, 404 U.S. 519 (1972) and the fact that the error was harmless (28 U.S.C. 2111).

2. Question - "Should this Court even consider a petition for certiorari in a case where the petition essentially raises for relitigation issues that were settled by this Court's denial of certiorari eight (8) years ago in a case between the same parties?"

Answer:

First:

The parties to the instant case are not the same as is evidenced by the facts that:

The attached list of named defendants in the instant case were not defendants in prior action, eight years ago;

The last four defendants named in said list are lawyers who represented plaintiffs Parish in said prior action and were dismissed by Parish as noted in petitioners statement of the case, page 4 of petition. The fifth named defendant, on said list, Edward L. Merrigan, is a lawyer, was and still is counsel for defendant Maryland and Virginia Milk Producers Association Inc. and so named in respondents brief herein.

The last four defendants named in said list are lawyers who represented Plaintiffs Parish in said prior action and were dismissed by Parish as noted in Petitioners Statement of the Case, page 4 of Petition and footnotes 2 and 3 thereto. The fifth named defendant on said list, Edward L. Merrigan, a lawyer, was and still is, counsel for defendant Maryland and Virginia Milk Producers Association, Inc.

Petitioners submit that defendant counsel, Edward L.

Merrigan, knew that the parties eight (8) years ago were not the same as those in the instant case, and also has full knowledge of the allegations against each of the many additional defendants named in the present "independent action" which are not the same.

As to the plea of statute of limitations, such do not apply to express trusts (continuing trusts).

Respectfully submitted,

Frank P. Parish, pro se

Theodore Fisher Parish, pro se

APPENDIX A

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

WILLIAM K. SLATE, II
CLERK

TELEPHONE 782-2213
AREA CODE 804
TENTH AND MAIN STREETS
RICHMOND, VIRGINIA 23219

November 15, 1978

Mr. Frank P. Parish
518 E. Baltimore Street
Taneytown, Maryland 21787

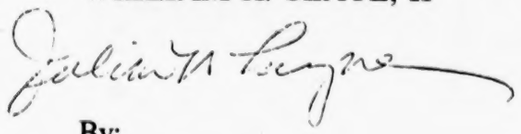
Re: No. 78-1079, Parish v. Maryland and Va. Milk Producers Assoc., Inc., etc.

Dear Mr. Parish:

Pursuant to our telephone conversation of today, please be advised that you have ninety (90) days from November 13, 1978, in which to file your petition for certiorari with the U.S. Supreme Court.

Sincerely yours,

WILLIAM K. SLATE, II



By:
Julian H. Layne
Deputy Clerk

JHL/epb/

APPENDIX B

JAMES E. CLICK, Secty. & Treas.,
Maryland and Virginia Milk Producers
Association, Inc.,
1530 Wilson Boulevard,
Arlington, Virginia 22209;

WILLIAM J. HUGHES, Jr.,
102 Oxford Street,
Chevy Chase, Maryland 20015;

AMERICAN DAIRY ASSOCIATION, AND
DIRECTORS THEREOF FROM 1963 TO
PRESENT DATE,
6300 North River Road,
Rosemont, Illinois 60018;

UNITED DAIRY INDUSTRY ASSN. and
MR. GLEN LAKE, President,
24270 West Seven Mile Road,
Detroit, Michigan 48219;

MR. PAUL HAND, Assistant General Manager
and Secretary of Interstate Milk Producers
Cooperative,
1225 Industrial Highway,
Southampton, Pennsylvania 18996;

MID-AMERICAN DAIRY ASSN., MEMBER OF
UNITED DAIRY INDUSTRY
ASSOCIATION,
S.S. Station 1837,
Springfield, Missouri 65805;

PRODUCER AGENCY OF F.O. #4, SERVE
MR. LESTER C. JONES,
Fostertown Road,
Medford, New Jersey 08055;

ATLANTIC DAIRY ASSOCIATION,
c/o DR. PAUL HAND, Asst. Gen. Mgr. and
Secretary of Interstate Milk Producers
Cooperative,
1225 Industrial Highway,
Southampton, Pennsylvania 18996;

MR. WAYNE KENDRICK,
1801 K Street, N.W.,
Washington, D. C. 20006;

WAYNE KENDRICK & COMPANY,
1801 K Street, N.W.,
Washington, D. C. 20006;

ERNEST C. CLIFFORD,
427 Pershing Drive,
Silver Spring, Maryland 20910;

PRICE WATERHOUSE & CO.,
1801 K Street, N.W.,
Washington, D. C. 20006;

EARL H. BUTZ,
Secretary of Agriculture,
12th Street and Independence Avenue, S.W.,
Washington, D. C. 20250;

COMMODITY CREDIT CORPORATION,
12th Street and Independence Avenue, S.W.,
Washington, D. C. 20250;

EDWARD L. MERRIGAN,
888 17th Street, N.W.,
Washington, D. C. 20006;

HERBERT M. BRUNE,
929 N. Howard Street,
Baltimore, Maryland 21201;

HARRISON M. ROBERTSON, Jr.,
929 N. Howard Street,
Baltimore, Maryland 21201;

CHARLES NORMAN SHAFFER,
342 Hungerford Drive,
Rockville, Maryland 20850;

THOMAS J. MICHIE,
601 East Market Street,
Charlottesville, Virginia 22901

****